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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

16 IN RE RIPPLE LABS INC. LITIGATION )  
17 ) CASE NO.: 4:18-cv-06753-PJH  
18 This Document Relates To: )  
19 ) [PROPOSED] ORDER DENYING  
20 ) PLAINTIFF AVNER GREENWALD'S  
21 ) AND VLADI ZAKINOV'S AND DAVID  
22 ) OCONER'S MOTIONS TO REMAND  
23 )  
24 )

## **[PROPOSED] ORDER**

The Court, having considered Plaintiff Avner Greenwald's Motion to Remand (ECF No. 17) and Plaintiffs Vladi Zakinov's and David Oconer's Motion to Remand (ECF No. 18) (together the "Motions"), and Defendants' Omnibus Memorandum of Points and Authorities in Opposition thereto, and Plaintiffs' Replies In Further Support of their Motions, declarations and exhibits, as well as the files in the case and any oral argument presented, and for good cause shown therein, it is hereby ORDERED as follows:

The Motions to Remand are DENIED.

Under California and Ninth Circuit law when there is complete consolidation in state court, the actions are considered together when determining whether federal subject matter jurisdiction exists. Specifically, in California, when there is "a complete consolidation or consolidation for all purposes . . . the two actions are merged into a single proceeding under one case number and result in only one verdict or set of findings and one judgment." Hamilton v. Asbestos Corp., 22 Cal. 4th 1127, 1147 (2000). After "actions are consolidated, . . . the allegations of the complaints can be treated as one pleading." People ex rel. Camil v. Buena Vista Cinema, 57 Cal. App. 3d 497, 500 (1976).

The Ninth Circuit in Bridewell-Sledge v. Blue Cross of California, 798 F.3d 923 (9th Cir. 2015), confirmed that it follows California law when determining whether a consolidated action is removable pursuant to the Class Action Fairness Act ("CAFA") and that "when examining whether [it] ha[d] federal jurisdiction over [action 1] and [action 2] under CAFA, it [was] necessary to view [action 1] and [action 2] as a single consolidated class action that was united originally, rather than as two separate class actions filed at different times." Id. at 930.

Accordingly, if the state court judge completely consolidated Greenwald v. Ripple Labs Inc. et al., 18-CIV-03461 ("Greenwald") with the In re Ripple Labs Inc. Litigation, Lead Case No. 18-CIV-02845 ("Ripple Labs"), for "all purposes," then under California and Ninth Circuit authority, these actions are to be considered together when determining whether there is federal subject matter jurisdiction pursuant to CAFA. This Court finds that the actions were consolidated for "all purposes" by the state court judge prior to removal and thus, because CAFA's requirements are otherwise satisfied, removal was proper.

1 Plaintiffs make two central arguments in their attempt to defeat federal jurisdiction that: (i) the  
 2 state court did not really mean to consolidate the cases, as consolidation was not proper; and (ii) the  
 3 consolidation was not Plaintiffs' idea. However, these arguments fail.

4 ***First***, this "Court's role is not to decide whether it was proper for the state court to consolidate  
 5 the actions, but whether the consolidation affects the Court's jurisdiction." Unifoil Corp. v. S.E.  
 6 Personnel Leasing, Inc., No. 18-18, 2018 WL 4676044, at \*2 (D. N.J. Sept. 28, 2018). Here, the state  
 7 court ordered complete consolidation. Defendants and Plaintiffs Zakinov and Oconer, the plaintiffs in  
 8 the two actions resulting in the consolidated Ripple Labs action, entered into the STIPULATION AND  
 9 [PROPOSED] ORDER CONSOLIDATING RELATED ACTIONS AND RELATED MATTERS  
 10 ("Stipulation"), which Judge DuBois of the San Mateo Superior Court signed and ordered that the  
 11 Zakinov and Oconer actions be "consolidated for all purposes, including pre-trial proceedings and trial."  
 12 (ECF No. 2, Ex. E ("First Consolidation Order") ¶ 6.) The Stipulation stated that: "When a case which  
 13 properly belongs as part of [Ripple Labs] is hereafter or has been filed in, ***remanded to***, or transferred to  
 14 this Court, ***counsel for the parties shall*** call such filing, ***remand***, or transfer to the attention of the clerk  
 15 of this Court ***for purposes of moving the Court for an order consolidating such case(s)*** with [Ripple  
 16 Labs.]" (Id. ¶ 15 (emphasis added).) Thus, the parties agreed that if a related action came before the  
 17 court, they would "call such filing" to the Court's attention for one particular, shared, and non-optional  
 18 purpose: to serve as a motion to consolidate or in order to obtain an order consolidating the remanded  
 19 action with Ripple Labs.

20 After the Greenwald action was remanded from this Court, Defendants filed a Notice of Related  
 21 Case in the San Mateo Superior Court indicating that Greenwald is related to Ripple Labs because it  
 22 "involves the same parties and is based on the same or similar claims," "arises from the same or  
 23 substantially identical transactions, incidents, or events requiring the determination of the same or  
 24 substantially identical questions of law or fact;" and "is likely for other reasons to require substantial  
 25 duplication of judicial resources if heard by different judges." (Declaration of Virginia F. Milstead  
 26 ("Milstead Decl.") Exs. 2-3.) Defendants served the Notice of Related Cases on counsel for Plaintiffs.  
 27 (Id.) Plaintiffs had five days to file a response "opposing the notice." Cal. R. Ct. 3.300(g). No Plaintiff  
 28 opposed the Notice.

1       Thereafter, Judge DuBois ordered Greenwald related to and consolidated with Ripple Labs  
 2 (Greenwald and Ripple Labs collectively, the "Action"). (ECF No. 2, Ex. F (the "Second Consolidation  
 3 Order").) Judge DuBois observed that the Notice of Related Cases had "been filed and served" and that  
 4 "no opposition or objection" was filed in response. (*Id.* ¶ 1.) Judge DuBois ordered that "[p]ursuant to  
 5 the order in Master File No. 18CIV02845 consolidating related class actions [e.g., the First  
 6 Consolidation Order], . . . the case of *Greenwald* vs. *Ripple Labs Inc.* 18CIV03461 is ordered  
 7 CONSOLIDATED as part of Master File No. 18CIV02845." (*Id.* ¶ 2.) Given that the Stipulation and  
 8 First Consolidation Order made clear that related actions, including remanded actions, would be  
 9 consolidated with Ripple Labs, the Court finds that Judge DuBois ordered complete consolidation.  
 10 Thus, this Court must consider the two actions collectively when determining whether federal subject  
 11 matter jurisdiction exists pursuant to CAFA. When the complaints are viewed together, each of the  
 12 requirements for CAFA is satisfied, granting this Court jurisdiction.

13       **Second**, Plaintiffs' argument that the Second Consolidation Order did not render the entire,  
 14 consolidated action removable because such order was not the result of a "voluntary" act they took is  
 15 misplaced. None of the cases Plaintiffs cite assists their argument here as they all arise in one of two  
 16 different contexts either: (i) removal under the "mass action" provisions of CAFA; or (ii) when diversity  
 17 jurisdiction arose due to the dismissal of a defendant on the merits. Such cases are inapplicable.

18       In fact, a consolidation may make a case removable—even when ordered sua sponte or sought by  
 19 the defendant—because removal based on a consolidation order does not offend the well-pleaded  
 20 complaint rule. In these situations, removal is still based only on a review of the complaints viewed  
 21 together. See, e.g., In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, 399 F.  
 22 Supp. 2d 340, 355 (S.D.N.Y. 2005) (state court sua sponte consolidation order rendered previously non-  
 23 removable action removable); Tonyco, Inc. v. Equity Mktg., Inc., No. 99-74995, 2000 WL 654957, at  
 24 \*3 (E.D. Mich. Apr. 25, 2000) (noting that had the actions been consolidated in state court, as opposed  
 25 to federal court, removal would have been appropriate); Barker v. Hartford Fire Ins. Co., 100 F. Supp.  
 26 1022, 1023 (E.D. Ky. 1951) (removal proper after sua sponte consolidation).

27       In any event, the Second Consolidation Order "is traceable to a voluntary act by Plaintiff[s]."  
 28 Thompson v. Target Corp., No. EDCV 16-00839 JGB (MRWx), 2016 WL 4119937, at \*8 n.7 (C.D. Cal.

1 Aug. 2, 2016). Plaintiffs voluntarily agreed to the Stipulation, which applies by its express terms to  
2 related actions and which contemplates that related actions remanded to state court, such as Greenwald,  
3 would be consolidated with Ripple Labs. (Ex. E ¶¶ 14, 15.) Defendants filed the Notice of Related  
4 Cases notifying the court of Greenwald for purposes of consolidation. Plaintiffs did not object.  
5 Plaintiffs' agreement to the stipulation, decision not to object to the Notice, and the subsequent  
6 consolidation gave rise to the circumstances for removal. That qualifies as a voluntary act traceable to  
7 Plaintiffs.

8 Plaintiffs also argue that independently Ripple Labs is not removable. However, this Court has  
9 concluded that Ripple Labs and Greenwald were consolidated for all purposes and need to be considered  
10 collectively to determine if there is federal subject matter jurisdiction pursuant to CAFA. The Court  
11 need not reach Plaintiffs' arguments regarding whether the Ripple Labs action is independently barred  
12 from removal.

13 Plaintiffs' request for attorney's fees is DENIED because removal was proper here.

14 DATED: \_\_\_\_\_, 2018

15  
16 Hon. Phyllis J. Hamilton  
17 United States District Judge  
Northern District of California  
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